

Serial No. 10/767,676

Atty. Doc. No. 2001P15983WOUS

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REMARKS

No claims have been amended, canceled or added by way of this response. Thus, claims 1-17 are presented for examination. Applicants respectfully request reconsideration and allowance of the pending claims view of the following remarks.

Response to Rejections Under Section 102:

The Examiner has withdrawn the 102(e) rejection and now Claims 1-17 stand rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (GB 2361131). The Examiner stating that "The Office Action should have been labeled with a 35 USC 102(b) rejection since Edwards. ... was published more than one year prior to the filing date in the United States".

The following is a quotation from MPEP 201.11(a)

In accordance with the conditions and requirements of section 120 of this title,... a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States.

The following is a quotation from MPEP 706.02(b)

A rejection based on 35 U.S.C. 102(b) can be overcome by .. (C)Perfecting *>benefit< under 35 U.S.C. 120, within the time period set in 37 CFR 1.78(a) or filing a grantable petition under 37 CFR 1.78(a), by amending the specification of the application to contain a specific reference to a prior application or by filing an application data sheet under 37 CFR 1.76 which contains a specific reference to a prior application in accordance with 37 CFR 1.78(a), and by establishing that the prior application satisfies the enablement and written description requirements of 35 U.S.C. 112, first paragraph. See MPEP § 201.11 and § 706.02; or

The preliminary amendments filed on January 29, 2004 and on September 30, 2005, properly claim priority to PCT application PCT/DE02/02836 and thus the instant application has an effective United States filing date of August 1, 2002. Therefore, Edwards October 10, 2001 publication date is not one year prior to August 1, 2002 and the 102(b) rejection is improper.

In view of the above, claims 1-17 are not anticipated by Edwards. Therefore, Applicants respectfully request that the Examiner withdraw the Section 102 rejections.

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Response to Finality of Office Action:

Applicants respectfully submit that the Response filed on April 30, 2007 to the Office Action mailed February 9, 2007 was fully responsive. Furthermore, Neither the Office Action mailed February 9, 2007 nor the Final Office Action mailed July 13, 2007 have included a proper rejection. Therefore, Applicants respectfully submit that the decision to make the Office Action Final is premature and request that in view of the above that the Examiner withdraw the finality of the Office Action.

Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. All correspondence should continue to be directed to our below-listed address. Accordingly, Applicants respectfully request that the Examiner reconsider the rejections and timely pass the application to allowance. Please grant any extensions of time required to enter this paper. The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including fees for additional claims and terminal disclaimer fee, or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: 7/26/07

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